

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 16 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SUGRABIBI

Versus

MALEK MEHAMUD MALEK RASUL

Appearance:

MR RN SHAH for Petitioners

MR RM VIN for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA
Date of decision: 22/09/2000

ORAL JUDGEMENT

This appeal is filed against the judgement and order of District Judge, Bharuch in Regular Civil Appeal No.51/82, which was pronounced on 25th October, 1983 whereby the judgement and decree passed by Jt. Civil Judge (S.D.), Bharuch in the Regular Civil Suit No.27/79, came to be dismissed and reversed and the said Suit was decreed in the favour of the Plaintiff.

The present Appeal is filed by the Appellants (Original Defendants). The facts of the Suit are that the Plaintiff described one property in the plaint and said that he was the owner of the said property and the Suit property originally belonged to his mother,

Ashabibi, widow of Malek Rasul Malek Amir. Ashabibi, mother of the plaintiff sold the said property to one Banubai. The plaintiff purchased the said property from Banubai under the sale deed dated 4-7-1968 and since then, according to the plaintiff, he was the owner of the property. Ashabibi, mother of the plaintiff was residing in one room on the western side of the said property and he was residing separately from his mother in the eastern portion and one room situated in the backyard towards east where, according to the plaintiff, other tenants were residing. Defendant No.1 is his sister and defendant No.2 is the husband of defendant No.1 and the defendant No.3 is another brother of the plaintiff. It was contended that the defendant No.1 was residing with Ashabibi, mother of the plaintiff, in the premises with the permission of the plaintiff and thereafter, since defendant No.1 was residing with Ashabibi, defendant No.2 came to reside with her after the marriage. It was further contended that after the death of Ashabibi on 18th September, 1976, defendant Nos.1 and 2 continued to reside in the western room of the suit premises. Defendant No.3 also used to come and reside therein for some time. Therefore, he was joined as a party to the suit. Since the plaintiff was in need of premises requested the defendant Nos.1, 2 and 3, who denied vacating the premises. Therefore, the plaintiff filed the suit against the defendants for the eviction of the defendants, from the suit premises.

The said suit came to be contested on behalf of the defendants, denying the contentions of the plaintiff. It was pleaded that the said premises was ancestral property of the father of the plaintiff and the defendant Nos.1 and 3. On the death of the father of the plaintiff, Malek Rasul Malek Amir, Ashabibi, mother of the plaintiff became the owner of the suit property under the gift executed by Malek Rasul Malek Amir. As the sons of Malek Rasul Malek Amir and Ashabibi, the defendants, who were minors, had their share in the said property and the said gift was not absolute. It was contended that the sale transaction between Ashabibi and Banubai was also not legal, because Ashabibi was not absolute owner of the property. However, in the year 1968, the said property was purchased back from Banubai and defendants contributed to sale price. Since the plaintiff was eldest, the document was executed in the name of the plaintiff. Therefore, it was contended that they are also owners of the suit property and that they enjoyed the property since their birth and since more than 12 years and have become owner of the said property through adverse possession.

Learned Trial Judge, vide his judgement and order dated 30th November, 1981 was pleased to dismiss the suit of the plaintiff and being aggrieved the Appeal No.51/82 was filed in the Court of District Judge, Bharuch. As aforesaid, District Judge, Bharuch reversed the findings of the Trial Court and decreed the suit for possession in favour of the plaintiff. Hence this second Appeal by original Defendants.

Learned Advocate, Mr.R.N.Shah, for the Appellant and Learned Advocate, Mr.R.M.Vin, for respondents were heard.

While admitting the Appeal, following substance in question of law was framed by this Court: "In view of the admitted facts and circumstances of the case, can the appellants - original defendants claim the tenancy rights? If so, can they be evicted from the premises in question?"

Learned District Judge, against the judgement and order of the Trial Court, was pleased to observe that there is no joint or ancestral property status as alleged by the defendants because parties governed by Muslim law. It was an admitted fact that the property was belonging to the father of the plaintiff, Malek Rasul Malek Amir, who gifted the property to his wife. Thereafter, the property was sold to one Banubai and was repurchased in 1968 by the plaintiff and, therefore, the plaintiff became the owner of the property. Since, according to Learned District Judge, there was no concept of coparcenary or ancestral property in Muslim law, the gift was valid or at least not challenged by anybody, by which Ashabibi became the absolute owner of the property and in that capacity she sold the property to one Banubai and the plaintiff repurchased the suit property from Banubai and became absolute owner of the suit property. Learned Judge also observed that the Ashabibi occupied the property as tenant of Banubai and defendant Nos.1 and 3 were residing in the said property alongwith Ashabibi and, therefore, there is no question of adverse possession of the defendants of the suit property.

So far as the claim of tenancy rights by the defendants is concerned, it is established principles of law that the defendants cannot take contradictory plea. Defendants have said that firstly they are the joint owners of the property, because they have contributed towards the sale price of the property when the plaintiff repurchased the suit property from Banubai and then it

was also pleaded that as owners, they were enjoying the property for more than 12 years. They claimed ownership by adverse possession. Now the plea of joint ownership, by adverse possession and plea of tenancy rights cannot go together. Defendants cannot be allowed to raise pleas to adverse possession as well as tenancy rights at the same time, or ownership as well as tenancy at the same time. Therefore, with reference to substantial question raised as above, it will have to be decided in the negative. The present Appellants cannot claim tenancy rights in the suit premises and, therefore, they are, as such, not protected from eviction.

No other substantial question has been raised and in view of the above discussion, there is no substance in the Appeal. The same is required to be dismissed.

With the aforesaid reasons, this Appeal stands dismissed with no order as to costs.

22-9-2000 (J. R. Vora, J.)

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